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**SEP 28 2006**

**OFFICE OF PETITIONS**

In re Application of	:
Glaser et al.	:
Application No. 09/971,954	: DECISION ON PETITION
Filed: October 4, 2001	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 109905-136622	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed July 20, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed with the petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed applications, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The amendment as drafted is unacceptable and, therefore, is not considered a proper reference under 37 CFR 1.78(a)(2)(i). In order for an application to claim the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America, each prior-filed application must name as an inventor at least one inventor named in the later-filed application and disclose the named inventor's invention claimed in at least one claim of the later-filed application in the manner provided by the first paragraph of 35 U.S.C. 112. Petitioner has claimed priority to application no. 09/538,525, which does not have at least one common inventor named in the prior filed applications.

Before the petition can be granted, petitioner must submit a substitute amendment in compliance with the aforementioned rules, along with a renewed petition under 37 CFR 1.78(a)(3).<sup>1</sup>

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional, petitioner must notify the Office.

There is no indication that the person signing the present petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the present petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted.

Further correspondence with respect to this matter should be addressed as follows:

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<sup>1</sup> The claim for priority may also be made in an Application Data Sheet in compliance with 37 CFR 1.121 and 37 CFR 1.76(b)(5).

Any questions concerning this matter may be directed to Charlema Grant at (571) 272-3215.

A handwritten signature in cursive script, appearing to read "Frances Hicks".

Frances Hicks  
Petitions Examiner  
Office of Petitions

cc: Steven Munson  
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